



Dillon

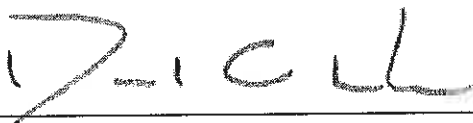
April 6, 2011

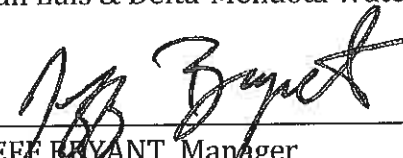
To: Grassland Bypass Project Interested Persons List (Attached)

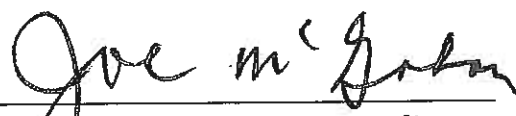
Re: Response to Patricia Schifferle Emails

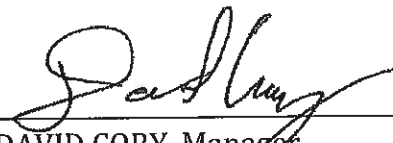
Copies of emails distributed by Patricia Schifferle with a subject line of "Thoughts and Photos Re Selenium Waiver and EPA's Advanced Notice of Proposed Rulemaking on Bay Delta water quality issues" were received by the Grassland Basin Drainers. The emails seem to deal solely with the Grassland Bypass Project, a successful non-point drainage management program. Many of the statements made in the emails are incorrect and show a lack of understanding of the physical geography and of the issues. Because the emails were distributed widely it is important that many of these misstatements be corrected. Attached is a point by point response to these statements and to the "photo tour" that was included.


Sincerely,


DAN NELSON, Executive Director
San Luis & Delta-Mendota Water Authority


JEFF BRYANT, Manager
Firebaugh Canal Water District


JOE MCGAHAN, Drainage Coordinator
Grassland Basin Drainers


DAVID CORY, Manager
Camp 13 Drainage District


DENNIS FALASCHI, Manager
Charleston Drainage District, Pacheco
Water District, Panoche Drainage
District

842 SIXTH STREET

SUITE 7

P.O. BOX 2157

LOS BANOS, CA

93635

209 826-9696

209 826-9698 FAX

cc: Patricia Schifferle
Pacific Advocates
15652 Alder Creek Rd
Truckee, CA 96161

Senator Dianne Feinstein
One Post Street, Suite 2450
San Francisco, CA 94104

Senator Barbara Boxer
501 I Street, Suite 7-600
Sacramento, CA 95814

Senator Lois Wolk
Delta Stewardship and Sustainability
State Capitol, Room 4032
Sacramento, CA 95814

Assemblyman Wes Chesbro
Joint Fisheries Committee
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

DeeDee D'Adamo
Senior Policy Advisor
Office of Dennis Cardoza
1010 10th Street, Suite 5800
Modesto, CA 95354

Congressman Jim Costa
855 M Street, Suite 940
Fresno, CA 93721

Congressman Devin Nunes
264 Clovis Avenue Suite 206
Clovis, CA 93612

Congressman Jeff Denham
1040 E Herndon Avenue #201
Fresno, CA 93720

Donald R. Glaser
US Bureau of Reclamation
Mid-Pacific Region
Federal Office Building
MP-100
2800 Cottage Way
Sacramento, CA 95825-1898

Susan P. Jones
US Fish & Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825-1846

Karen Schwinn
Associate Director
Water Division
U.S. EPA Region 9
75 Hawthorne Street (Wtr-1)
San Francisco, CA 94105

Charles R. Hoppin
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Frances Spivy-Weber
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Rudy Schnagl
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Joe Grindstaff, Executive Officer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Michael Jackson
USBR
1243 "N" Street
Fresno, CA 93721-1813

Joe McGahan

Distribution List Name: Grassland Area Farmers News List

Members:

Andy Gordus
Atomic Falaschi
Bill Beckon
Bill Jennings
Bob Parris
Carol Weinstein - EPA
Chris Eacock
Chris Linneman
Chris White
Dan Nelson
Dave Cory
Dave Widell
David Block
Dennis Falaschi
Dennis Woolington
Diane Rathmann
Eugenia McNaughton
Frances Mizuno
Gail Cismowski
Jeanne Chilcott
Jeff Bryant
Joe McGahan
John Fields
John Herrick
John Kopchik
Joy Winckel
Juan Cadena
Julie Eldredge
Kim Forrest
Lucinda Shih
Marcos Hedrick
Mark Grossi
Michael Jackson
Mike Gardner
Mike Henry
Mike Wade
Nicole David
Patricia Schifferle
Phil McMurray
Richard Denton
Rudy Schnagl
Sheryl Carter
Terry Young
Theresa Presser
Tim McLaughlin
TJ Kopshy
Tom Maurer
Tom Stokely
Victor Stokmanis

Response to Patricia Schifferle emails

(Numbers refer to marked paragraphs in the emails and to the attached pictures)

- 1) The drainage water for the Grassland Bypass Project (GBP) uses drainage channels as it passes through the Grassland Water District and State and Federal Refuges that are segregated from wetland water supply channels. Those channels historically contained commingled wetland water supplies and drainage. Through the Project's accomplishment, channels within the wetlands area are able to deliver fresh water supplies 365 days per year to pristine wetland areas.
- 2) The Data Collection Review Team (DCRT) is a technical workgroup. Traditionally, meeting notices were provided to the long-time members of this body that are developing the monitoring program for the continued use of the Grassland Bypass Project. Members of the public are free to attend in person or by call-in, as Ms. Schifferle did for the March 17, 2011 meeting. The Regional Board has standard procedures to allow for public participation in the process for adoption of waste discharge requirements.
- 3) Ms. Schifferle misrepresents what GBP representatives said at the SWRCB hearing. California local agencies cannot make "commitments" of federal funding. They can, however, report that the United States has provided and indicates that it will provide funding. The September 30, 2010 Declaration of Donald Glaser, Regional Director, Mid-Pacific Region, United States Department of the Interior, Bureau of Reclamation filed in federal court under penalty of perjury, describes funding for the GBP and SJRIP, including \$750,000 funding for monitoring obligated in 2010 (page 4, line 17); funding for activities of the "Westside Regional Drainage Plan" including for development of the SJRIP (page 5, lines 4-23); obligation of \$500,000 for design and construction of facilities needed to redirect flows from Reclamation's DMC sumps (p. 5, line 25-page 6, line 6), and ongoing work on the pilot treatment facility (page 2, line 24 – page 3, line 21). It is a reality that all federal funding is contingent upon Congress appropriating funds, and until that occurs for each fiscal year new federal funds cannot be committed by a federal agency. In terms of commitment, however, according to Regional Director Glaser, Reclamation requested FY 2011 funding which was included in the Senate appropriations bill and requested in the President's budget, and is working on its FY 2012 funding request (page 2, lines 20-22). In the meantime, work is ongoing with federal funds already appropriated and with very reasonable expectations that funding will continue. As documented by the Glaser Declaration, the statements that were made to the State Water Resources Control Board reflect activities that are all ongoing and in progress. Specifically concerning treatment, Project representatives have been told that funding is available for pilot treatment studies in the amount of

\$15,000,000, and project representatives are working with Reclamation on the project design.

- 4) Section 5 of the 2010 Use Agreement for continued use of the San Luis Drain for the period 2010-2019 requires the San Luis & Delta-Mendota Water Authority to establish and implement a comprehensive monitoring program. The Oversight Committee established in the Use Agreement, consisting of Reclamation and various resource and regulatory agencies, has appointed a committee, the Data Collection and Review Team, containing agency staff and technical experts of interested parties, to both recommend the monitoring program and review and report on the data. The 2010 Use Agreement provides for continuation of the 2001 monitoring program, as amended, and at present the biological and water monitoring is ongoing while revisions are being considered through the Data Collection and Review Team. There is concern that State monies previously made available to fund portions of the monitoring will not be available, and a glitch did occur in 2010 when certain monitoring previously performed by the California Department of Fish and Game was skipped, an issue that is being remedied for 2011 by Reclamation's indication it will perform that additional monitoring. While we do expect the DCRT to modify the monitoring program in some respects and the federal budget for FY 2011 has not yet been passed, the GBP participants have already adopted their budget for monitoring expenditures and there is no plan to reduce the overall monitoring program. Substantial failure to implement the monitoring program would be a breach of the Use Agreement terms and could lead to termination of the Use Agreement, so with or without State funding, the monitoring program will be implemented for the Project to continue.
- 5)
 - A. The selenium levels measured in the San Joaquin River at the compliance point at Crows Landing and further downstream in the Delta are not at toxic levels. These compliance points have met the selenium water quality objectives for many years and in fact this section of the San Joaquin River has been removed from the State 303(d) list for selenium.
 - B. Ms. Schifferle is wrong in her statement that under the EIS-EIR, selenium-bearing sediment will be deposited on residential or industrial land. The project does provide for removal of sediment that is in the San Luis Drain and the approach to removal and disposal is clearly described in the Environmental Impact Report/Environmental Impact Statement for the Grassland Bypass Project ("EIS-EIR"), pp. 2-19 and 2-20. Before removal, sediment cores will be analyzed for selenium by an accredited laboratory, with the results compared to the sampling risk criteria for hazardous waste, ecological risk, and human risk. Hazardous risk materials must be disposed of through removal to permitted sites. The EIS-EIR states on page 2-19 that sediments with selenium concentrations below hazardous waste criteria but exceeding ecological risk criteria "may be applied" for reuse to lands zoned by residential or industrial development.

However, on page 2-20, the document goes on: "Possible agricultural lands for sediment disposal have been identified in close proximity to the Drain, and no sediment disposal to residential or industrial lands is proposed." The sediment management plan includes a post-application monitoring protocol for all land application sites (p. 2-20), which will provide a mechanism to avoid human or environmental risks, including those outlined in the Lawrence Berkeley Laboratory study cited by Ms. Schifferle. The sediment management plan in the EIS-EIR therefore would provide the safeguards about which Ms. Schifferle is concerned.

- 6) A. Ms. Schifferle states that the Terms and Conditions of the 2001 Biological Opinion required "storm water control measures by 2005" and that the provisions have not been enforced. The complete terms and conditions of the USFWS Final Biological Opinion, Grassland Bypass Project Operation, Merced and Fresno Counties, California, September 27, 2001, File Number 1-1-01-F-0153 contain no such Term and Condition. The 2010-2019 Use Agreement acknowledges that high rainfall events occasionally will create flows that cannot be controlled without discharge from the systems of the draining Parties. The GBD has adopted a Storm Event Plan that requires, to the extent possible, that sumps be shut off during such events and that notice be provided to downstream and regulatory agencies. These measures have been implemented. The Use Agreement requires the parties to develop, beginning no later than Year Seven (2016), a long-term storm water management program. In the meantime any exceedances of selenium loads in stormwater runoff will be accounted for against the loads the Grassland Basin Drainers may discharge under the terms of the Use Agreement and their permits.
B. Ms. Schifferle states that in August 2009, wetland areas "within the project" have exceeded 20 ppb. We assume the term "wetland areas within the project" refers to wetland delivery channels, not the separate channels used for GBP drainage conveyance. Except in the event of very large rainfall/flood events, no water from the Grassland Bypass Project is discharged into wetland delivery channels. Since inception of the Grassland Bypass Project, water quality levels in wetland water supply channels have met the two part per billion monthly mean water quality objective in 99% of the measurements, and there have been no monthly mean values exceeding 20 part per billion. In August, 2009 there was an individual measurement within the wetland delivery system at the Agatha Canal (Site K) that exceeded 20 ppb at a time when there was no flow at that location. Except for the flood events mentioned above, there are no unregulated discharges from the Grassland Bypass Project, and there are no areas "to the north" that are within the project area. Therefore, except for discharges of high rainfall pursuant to the Stormwater Management Plan the Grassland Bypass Project is not responsible for such incursions and different regulation of the GBP will not resolve any such issues. In order to address selenium in inflows to wetland delivery channels from areas outside the GBP, the Use Agreement

authorizes but does not require participation by an additional 1100 acres "whose owners choose to become Draining Parties." The GBP has initiated outreach to those owners, who would have to construct facilities, submit to the regulatory regime and pay significant costs and obligations to participate in the GBP.

- 7) Ms. Schifferle states that Reclamation has not fulfilled its requirement under D-1641 to mitigate for delivering water to Westlands Water District and "the Grassland Drainers" to areas outside of their places of use, service areas and contracts." Westlands Water District is not part of the Grassland Area Drainers or the GBP. Whether or not Reclamation has met D-1641 obligations to provide habitat compensation for lands outside the Central Valley Project (CVP) service area that had been served with CVP water prior to the Decision, the mitigation is inapplicable to lands served by the GBP. D-1641, including the "Encroachment Area" figure clearly shows that the entire area of the Grassland Bypass Project, all of which lies east of Interstate-5, is designated as the "Existing Permitted Place of Use." In essence, no lands within this Project were subject to any mitigation under D-1641, and Ms. Schifferle's statement is in error.
- 8) A. Ms Schifferle comments that given the "Advance Notice Proposed Rulemaking" recently released by US EPA, "it would be helpful and the law requires, these promised mitigation measures are enforced." The San Luis & Delta-Mendota Water Authority will respond to the request for input in the ANPR. Whether or not that process results in any additional EPA rulemaking affecting the GBP, the participants in the GBP will continue to implement measures required, whether as mitigation measures or otherwise, consistent with the recently approved Basin Plan Amendment and the terms of the ongoing Use Agreement and regulatory programs.
B. Ms. Schifferle indicates it is important to provide notice of technical meetings, regulatory actions and waste discharge requirements "to the listed groups." While that groups she refers to are not identified, monitoring data from the Grasslands Bypass Project is posted on the web at <http://www.sfei.org/gbp>. Notice for meetings of the Oversight Committee and Data Collection and Review Team are provided to committee members and interested persons. Regulatory proceedings of EPA, SWRCB and the Regional Board, including proceedings for the adoption of waste discharge requirements, are publicly noticed in accordance with standard procedures.
- 9) Please see Paragraph 4 above concerning funding of the monitoring program. Ms. Schifferle cites no facts to support her opinion that project benefits are overstated and impacts understated. All drainage from the Grassland Basin Drainer's project area has been removed from Salt Slough, resulting in its availability as a water source and delivery channel for wetland supplies. There has been mitigation for the loss of Mud Slough as a wetland supply, and that mitigation is increased under the terms of the 2010 Use Agreement. She also

accuses the project—and apparently the representatives of regulatory and resources agencies who establish and oversee the monitoring program—of lying: “This is compounded when monitoring is reduced, monitoring periods are changed to mask impacts, and monitoring locations are altered to gain different results.” Ms. Schifferle participated in the most recent DCRT meeting and hopefully now has a better perspective on why and how changes in the monitoring program are effected. There is no basis to substantiate her prior comments, which should be measured against the very public scrutiny and analysis of performance by the Grassland Basin Drainers.

- 10) A. The drainage water for the Grassland Bypass Project uses drainage channels as it passes through the Grassland Water District and State and Federal Refuges. Through this segregation channels within the wetlands area are able to deliver fresh water supplies to pristine wetland areas. Our comments on the attached photos are set forth in detail below, but a glimpse reveals that while waterfowl may choose to rest upon the drain water, the drainage channels are cement lined or otherwise kept clear of vegetation to reduce their attractiveness for waterfowl habitat or feeding, the only means of incurring risk.
B. The chart attached by Ms. Schifferle contains predicted fish mortality levels based upon specified water quality concentrations from selenium concentrations in the San Joaquin River reach immediately downstream of Mud Slough (“Site H”). The EIS-EIR included substantial analysis and responses to comments regarding potential impacts of the continuing GBP to reintroduced salmon in the San Joaquin River and concluded that the GBP would not result in cumulatively significant effects upon salmon restoration under the San Joaquin River Restoration Program (EIS-EIR, Page 6-52 and Appendix I, pages I-59 through I-65). That analysis supported Reclamation’s Record of Decision to proceed with the 2010 Use Agreement and the San Luis & Delta-Mendota Water Authority’s Use Agreement approval. It was used by the Regional Board for the recently adopted Basin Plan Amendment for selenium control, which was approved by the California Office of Administrative Law. However, in order to address concerns of the Fish and Wildlife Service and other interested parties, the Grassland Basin Drainers requested and Reclamation approved additional actions to those required in the Use Agreement, including increased monitoring and action triggers based upon the selenium fish tissue triggers utilized to develop the chart referred to by Ms. Schifferle, despite the fact that project participants and their technical representatives dispute that the triggers represent the established credible scientific levels at which specific effects will be demonstrated. This is additional evidence indicating that the Grassland Basin Drainers are stepping up to address issues and theoretical concerns within the existing regulatory framework.
- 11) A. Toxic levels of selenium are not measured in the San Joaquin River at the compliance point at Crows Landing or further downstream in the Delta. These

compliance points have met the selenium water quality objectives for many years and in fact this section of the San Joaquin River has been removed from the State 303(d) list.

B. This sediment that is in the San Luis Drain that needs to be removed and disposed is clearly described in the Environmental Impact Report/Environmental Impact Statement for the Grassland Bypass Project including an appropriate monitoring program for those purposes. See response 5 B. above for additional detail.

- 12) A. The Westlands Water District is not a part of the Grassland Bypass Project. Since the time of the Broadview Water District's Environmental Assessment referred to by Ms. Schifferle, Broadview has been retired from irrigated agriculture and its sumps have gone dry, creating a buffer with decreasing groundwater levels between irrigated land in Westlands and the GBP. Westlands has purchased and retired some 40,000 acres upslope of the GDA. Should any upslope areas contribute seepage or migration of subsurface water into the drainage systems within the GBP, any selenium or salt loads are accounted for as part of the GBD loads that must meet regulatory requirements for the Grassland Bypass Project and the limitation on discharge that can occur.

B. Ms. Schifferle does not indicate in what documents USFWS has noted that Westlands may contribute to harm of giant garter snake or other endangered species in the Grasslands. So far as is known to the Grassland Basin Drainers, Westlands has no drainage outlets to the Grasslands. Insofar as the systems serving the GBP include selenium load contributed by upslope intrusion, the effects of the GBP and SJRIP on Giant garter snakes and other endangered species have been analyzed in the EIS-EIR and addressed by December 18, 2009 Biological Opinion issued by the U.S. Fish and Wildlife Service for this project.

- 13) A. Essentially the only fully correct statement included in this paragraph is that the Grassland Basin Drainers hosted a tour for Pacific Advocates and others as noted in order to show them the project. Pacific Advocates allocated about three hours for this tour. It is impossible to view all of a 100,000 acre agricultural area, a 6,000 acre re-use area and some 25 miles of San Luis Drain in a few hour period. Pacific Advocates and others were taken to any site that they requested to visit. Representatives of the Grassland Basin Drainers host more than a dozen tours a year and tailor those tours to the expressed areas of interest and available time for each touring group. There is no "official" tour that is available for the Grassland Bypass Project and as detailed a tour can be given as time is allocated from the viewers.

B. No participant during the tour mentioned by Ms. Schifferle requested monitoring information. This information is readily available under the Grassland Bypass website at <http://www.sfei.org/gbp>. In addition the annual reports for the Biological Surveys in the re-use area are included in this website and are

readily available to anyone who so desires. Regarding funding of monitoring, please see response to Paragraph 4.

C. Regarding embryo photographs, Ms. Schifferle states that "we" requested photographs of "Kesterson effects found in the deformed embryos at the reuse area." She apparently refers to requests By Tom Stokely representing California Water Impact Network under the Public Records Act made first to Panoche Drainage District and subsequently, to the San Luis & Delta-Mendota Water Authority for photographs depicting the one embryo reported as deformed in the 2008 Selenium Egg Monitoring Report. There are no 2008 embryo photographs in the records of Panoche Drainage District or the San Luis & Delta-Mendota Water Authority, and therefore none were provided. Project managers are well aware of the need to carefully manage their reuse area to avoid selenium exposure, conduct the egg monitoring and other biological monitoring for the very purpose of detecting and managing problems, and have taken steps to prevent recurvirostrid nests throughout the SJRIP and in particular in the drain where the 2008 eggs were detected. Thus, in 2009, only 2 such nests were found on the 6,000 acre SJRIP, with egg selenium much lower than in 2008. Ms. Schifferle seeks to inflame the issue by referring to "Kesterson Effects," whereas the 2008 report and subsequent history demonstrate that despite the 2008 occurrence, SJRIP is not causing widespread selenium effects on wildlife.

- 14) Please see information regarding the status of each of these items in Response to Paragraph 3. As in any project of this nature where there are Federal owners and public agencies, project development is a slow, incremental process resulting from multiple staff-level contacts, rather than through noticed public meetings. This process is ongoing for both the pilot treatment facilities and the Delta Mendota Canal sumps. The waste discharge requirements, including the monitoring program that will be required will certainly be a public process through the Central Valley Regional Water Quality Control Board.
- 15) The Grassland Bypass Project has dramatically reduced any selenium and salts discharged from its boundaries. With the Basin Plan Amendment extending the compliance dates for Mud Slough and the reach of the San Joaquin River between Mud Slough and Hills Ferry, water quality objectives downstream of the Project are being met. The SWRCB has determined not to continue to include the lower San Joaquin River on its 303(d) list for selenium. The GBP is obligated to conduct a comprehensive water quality program designed to protect on-site and offsite resources. Extra monitoring is being done to assure protection of outmigrating salmonids as the San Joaquin River Restoration Program is implemented. We assume that despite this record Ms. Schifferle is picking up on questions raised in EPA's ANPR regarding the effects of increased flows through the San Joaquin River Restoration Program on moving selenium down the system into the Bay-Delta Estuary. We expect to comment on speculation in the ANPR about the effects of such flows, including the need to consider selenium

speciation, scientific evidence concerning the extremely slow oxidation of inorganic selenium and selenite to bioavailable forms, and EPA reports relating to the North Bay Selenium TMDL that San Joaquin River inputs are not affecting the estuary.

Comments on photographs:

- 16) This photograph is an accurate photograph. The statement that it travels through wetland areas is incorrect and in fact it is a drainage channel used to keep water out of wetland areas and travels through private lands. This was explained to Pacific Advocates and they chose to make assumptions without checking the facts.
- 17) The whole area in question, the Grassland wetlands, the San Joaquin River Improvement Project Re-use area as well as many other areas in this area are frequented by wildlife. This is documented in the annual reports for the Biological Reports for the San Joaquin River Improvement Project and if there are bodies of water there are going to be wildlife. No one, however, is suggesting that wildlife swimming in drainage water has detrimental effect on the wildlife.
- 18) Please see Response 17. In addition in the SJRIP reuse project hazing is implemented to minimize use.
- 19) Please Responses 17 and 18. The purpose of the use of the federal San Luis Drain for 28 miles is to keep drainage water out of the delivery channels for the Grassland wetlands. This has been very successful allowing delivery of additional water supplies to private wetlands and public State and Federal refuges.
- 20) The wetlands that are shown are flooded with fresh water supplies, the delivery of which is made possible because the Grassland Bypass Project routes drainage water from the Grassland Drainage area through specific bypass channels and through the federal San Luis Drain. This picture demonstrates the benefits of the project.

The pristine wetlands near the drain were restored as part of Kesterson mitigation measures. That is, the drain itself has a historic connection to the resurrection of the area that is now protected and managed by the Fish and Wildlife Service.
- 21) This photo is of a germinating alfalfa field being irrigated and sprinkled up with fresh water. The field is located in Section 13, Township 12 South, Range 12 East on an 80 acre parcel, Field 13-6 in the SJRIP reuse area east of Russell Avenue. The picture was taken from the bank of the Delta-Mendota Canal and

not from the CCID Main Canal, which is approximately four miles to the north. Any time water is sprinkler irrigated on a field it will show a visible ponded area. These areas disappear as soon as the irrigation water is shut off. The field is just being developed and has not been used for drainage recirculation. Ms. Schifferle did not ask to see this field on the Tour and did not ask questions about its location or what was occurring. Instead she and her photographer came unescorted to the SJRIP, whereupon she took the photo and took the liberty to distribute it with the erroneous statement that it depicts how the Project involves environmental risks from ponded seleniferous drainwater and how it is "typically left out of the GBP Tour" in a blatant effort to impugn the Project and its Managers to a wide audience including State and Federal representatives and regulatory agencies. Project Managers are willing to take the recipients of the email on a tour of every acre of the SJRIP.

- 22) The possible impacts that are identified in this chart are taken from a report from Fish and Wildlife Service. The possible impacts to this location from selenium in the water were dealt with in the Environmental Impact Report/Environmental Impact Statement for the project and are available for review. If Pacific Advocates would like to review and then have a meaningful discussion, Project Managers are willing to do so (See comment 10(B)).
- 23) The photographs depict embryos from a location identified only as "5-Points" an area that is some 35-40 miles to the south of the Grassland Drainage area; there is absolutely no drainage connection from that location to the Grassland Drainage Area.

In summary, the Grassland Bypass Project has been the first regulatory compliance program for agricultural non-point discharges in the State of California. The GBP participants have created the structure for a regional, coordinated program to manage and reduce subsurface drainage in general and to meet stringent load reductions for both salts and selenium, making the largest contributions to water quality improvements downstream that have ever been achieved. They have taken on and are striding towards solutions to drainage issues that have affected them and the State for over 60 years. They are regulated through the terms of their Use Agreement with Reclamation, which includes among other obligations mentioned above, incentives to accelerate performance and also mitigation for wetlands impacted by the continuing program. They are subject to terms and conditions of a US Fish and Wildlife Service biological opinion. They are subject to water quality objectives and, as noted in the 2010 Use Agreement, Section III.H.2.(a)(2), page 14 and Appendix D, page 33 will be subject to any lowered TMDL for selenium. Ms. Schifferle has not demonstrated the failure of the GBD to comply with existing commitments or requirements under ongoing regulation. She cites to various documents as support for her "concerns" about the project, but a fact check indicates that virtually every such citation is in error or a misrepresentation. This approach indicates that her comments, like her "take" on the

tour she received, reflect her apparent belief that her convictions about the project are justified and that any conflicting factual reality should be disregarded. The project has been cited in a 2011 publication of the Public Policy Institute of California, Managing California's Water, which suggests that California "build on [the Grasslands] model for managing nonpoint sources". The GBP is a complex project addressing a difficult issue and there will be imperfections and questions. However, the Project record indicates the enormous and proactive efforts of its participants and the overall success of the GBP from the standpoint of both regulators and regulated parties, which should help guide the Regional Board, State Water Resources Control Board, and EPA as we move forward with the regulatory process.

Joe McGahan

From: Patricia Schifferle [pacificadvocates@hotmail.com]
Sent: Friday, February 25, 2011 3:36 PM
To: choppin@waterboards.ca.gov; fweber@waterboards.ca.gov; Isenberg@deltacouncil.ca.gov
Cc: 'Rudy Schnagl'; 'Chris Acree'; 'Barbara'; 'barbara Vlamis'; 'Michael Jackson'; 'Tom Stokely'; 'Jonas Minton'; 'John McManus'; DeltaKeep@aol.com; jim.metropulos@sierraclub.org; 'Carolee Krieger'; 'Bruce Tokars'; zgrader@ifrfish.org; 'Byron Leydecker'
Subject: FW: Thoughts and Photos Re Selenium Waiver and EPA's Advanced Notice of Proposed Rulemaking on Bay Delta water quality issues

Dear Mr. Hoppin and Ms. Spivey-Weber:

Attached is a photo tour of the Grassland Drainers area where concentrated selenium will be sanctioned to travel in unlined and open ditches through more than 34 miles of federal and state wildlife refuge areas and wetland areas. Please also see the comments below sent to EPA. We understand the Central Valley Regional board staff is developing Waste Discharge Requirements for the continued discharge of selenium in excess of federal and state protective standards. Also we understand the Grassland Drainers technical advisory committee has met.

1

Despite assurances to you and the public, no public notice was provided for this technical meeting nor the anticipated regulatory activities. Attached are photos that provide you and the Board with a clearer visual representation of the areas at risk due to this discharge of toxic selenium.

2

As you will recall at the SWRCB Hearing in October 2010, approving the selenium enforcement waiver that allows selenium discharges into the San Joaquin River above state and federal standards for almost another decade, the Grassland Drainers committed to you:

3

1. Federal funding to redirect unregulated sumps now discharging selenium into the Delta Mendota Canal to the reuse area.
2. Federal funding for adequate monitoring both in waste discharge requirements and for unregulated discharges into wetland areas.
3. Federal Funding for the In-Valley treatment and reuse area.

None of this federal funding appears to be in the proposed federal budgets of either the President or Congress. In fact critical biological and water monitoring at both the state and federal levels for this project are slated to be reduced. Given the high levels of selenium already found that threaten endangered species, fish and wildlife, failing to fund this compliance monitoring would render a project already short on enforcement measures even more vulnerable to failure to comply with federal and state law.

4

The sanctioned use of the federal San Luis Drain to continue the discharge toxic levels of selenium into the San Joaquin River and Delta for approximately another ten years also provides for the dredging of some 200,000 cubic yards of toxic selenium sediment that will be discharged to various lands including agricultural, housing and fill projects. The Lawrence Livermore Lab studies have found this discharge can harm public health especially if it is taken up in plants such as cantaloupe and consumed up the food chain. Hopefully the WDRs contemplated by Central Valley Regional Board staff will ensure public health safeguards, fish and wildlife mitigation and water quality protections.

5

Further, USFWS in the under the Terms and Conditions of the 2001 Biological Opinion for the continued discharge of toxic selenium until 2010, required storm water control measures by 2005. These provisions have not been enforced. Further in August 2009, wetland areas within the project have

6

exceeded 20 ppb. This is lethal and is known to cause reproductive failure. The supposition this is from the continued unregulated discharge of selenium laced drainage water from areas within the project area to the north. No enforcement action has been taken.

Finally, in D-1641, the SWRCB required within 10 years, the Bureau to mitigate for delivering water to Westlands and the Grassland Drainers to areas outside of their places of use, service areas and contracts. This provision also has not been enforced. 7

Given EPA's decision to review the effectiveness of current programs designed to protect water quality and aquatic species habitat in the Bay Delta Estuary thru an Advance Notice of Proposed Rulemaking (ANPR), it would be helpful and the law requires, these promised mitigation measures are enforced. Also it is important to provide notice to the listed groups of technical meetings, regulatory actions or waste discharge requirements that will ensure provisions of state and federal law are enforced. 8

Thank you for your consideration.

Regards,

Patricia Schifferle

From: Patricia Schifferle [mailto:pacificadvocates@hotmail.com]

Sent: Thursday, February 24, 2011 4:13 PM

To: 'Schwinn.Karen@epamail.epa.gov'

Cc: 'Tom Stokely'; 'Steve Evans'; 'Jonas Minton'; 'zgrader@ifrfish.org'; 'DeltaKeep@aol.com'; 'Isheehan@cacoastkeeper.org'; 'John McManus'; 'jim.metropulos@sierraclub.org'; 'Carolee Krieger'; 'Bruce Tokars'

Subject: Thoughts and Photos Re Selenium Waiver and EPA's Advanced Notice of Proposed Rulemaking on Bay Delta water quality issues

Dear Karen,

Thanks for the Advance Notice of Proposed Rulemaking (ANPR) on the effectiveness of current programs designed to protect water quality and aquatic species habitat in the Bay Delta Estuary. It is great to see this comprehensive approach by EPA. I am sure the various groups will comment, but given the pending nature of the Selenium Enforcement waiver for the Grassland Drainers and the use of the federal San Luis Drain to discharge selenium into the San Joaquin River and ultimately the Delta Estuary, I thought it would be a good opportunity to share the attached photo tour of the project.

Recent reports that the Technical Committee of the Grassland Drainers met and determined resources were not sufficient to continue monitoring are disturbing. As the above groups have discussed in meetings and comments the benefits of this project—shifting pollution from Salt Slough and concentrating selenium in Mud Slough have been overstated. Equally the impacts have been understated. This is compounded when monitoring is reduced, monitoring periods are changed to mask impacts, and monitoring locations are altered to gain different results. 9

While the project benefits suggest 90 miles of wetland channels are protected, you can see from the attached photos and maps, the 38 miles of concentrated selenium drainage flows either directly adjacent to or through National Wildlife Refuges and State Wildlife Refuges. Also attached is a more up to date chart of predicted fish mortality in the San Joaquin River due to selenium discharges from the project. Because this area is used so heavily by the Pacific Flyway and the selenium concentrations ultimately accumulate in the Delta and Suisun Marsh, we need more monitoring and mandatory enforcement actions not less. 10

Potential toxic or reproductive effects to fish, micro-invertebrates and their consumers including humans and other animals needs to be monitored throughout the project, not just at the reuse area. In the Bureau's ROD they suggest 200,000 cubic yards of sediments from the federal San Luis Drain can be safely put on the land as a disposal method. Little analysis is provided and no monitoring to make sure spreading this selenium contamination to housing, road or agricultural projects will not increase the exposure and further spread this toxic pollution to surrounding areas and into groundwater supplies. Studies indicate oxidation during dredging and spreading can oxidize selenium making it more available for up take by plants and rainfall and irrigation are known to spread it to groundwater and surface waters.

11

As mentioned in the hearings and our meeting, the Bureau's draft Broadview Environmental Assessment estimated about a third of the subsurface drainage below Broadview WD originated outside and upslope of the district boundaries via lateral flow from agricultural lands in the south and west (i.e. Westlands WD). Also the SWRCB in the 1641 Water Rights Decision identified lands with the San Luis Unit that contribute to drainage water contamination to the San Joaquin River, and yet there is no monitoring of this drainage nor seepage from other sources within the project area. These are basically unregulated discharges in violation of Basin Plan requirements. USFWS also noted Giant garter snakes and other endangered species in the Grasslands may be subject to harm as a result of contamination not only from the project, but also Westlands. Further USFWS notes unregulated discharges at times reaching hazardous waste levels can also be found in these unregulated discharges.

12

Please take a look at the attached photos and give me a call if you have any questions. This tour was done in combination with US Fish and Wildlife Service and the Grassland Drainers in October 2010. Earthjustice, representatives from CSPA, Salmon Now all attended. We did request to see some of the areas outside of the "official" tour, including the 4 mile unlined Grasslands Drainage Canal through the Grasslands wetland area, the San Luis Drain both at the point of discharge from the GBP and the point of discharge from the Drain into Mud Slough. We also requested information regarding the monitoring being conducted along the approximately 38 miles of open selenium ditches running through the wetland and wildlife refuges. Most of this monitoring was conducted thru vehicle surveys, some fish tissue sampling and water monitoring. It is unclear how much of this monitoring will be funded, thus raising questions about compliance. We also requested photographs of Kesterson effects found in the deformed embryos at the reuse area. This request was denied. Being forthright and disclosing this information to the public and decision makers would assist in making more informed decisions. This information paid for through public tax dollars should be readily available.

13

Commitments were made by the Grassland Drainers before the SWRCB that the federal government would provide funds to ensure the viability and implementation of the In-Valley Treatment Drainage Reuse Facility along with the required biological and water monitoring; the unregulated selenium discharges into the Delta Mendota Canal would be redirected to the reuse area; and that the public would be kept informed regarding the technical meetings and findings. None of these things have taken place to my knowledge. In fact, funding has been reduced and monitoring promised to ensure compliance is not being funded.

14

The State and Regional Water Quality Control Board contend compliance stops at the San Joaquin Basin Plan line. The hydrology and river aquatic systems nor the Pacific Flyway adhere to this jurisdictional line. It is encouraging EPA will be looking at the fate of these pollutants and contaminants on the estuary. Hopefully EPA can assist the CVRWQCB to ensure the drainers pay for compliance monitoring including comprehensive biological, ground and surface water and sediment monitoring.

15

Regards,
Patricia

Patricia Schifferle
Pacific Advocates



**Beginning of the Grasslands Bypass Selenium Discharge-
-Travels 4 miles unlined ditch through wetland areas.**



**Downstream From Initial GBP Selenium Discharge--
Wildlife Swim in Selenium Laced Drainage Water**



**Grasslands Bypass Selenium Drainage Ditch Prior to
Discharge Into the San Luis Drain**



**Grasslands Selenium Drainage after Reuse Area is
Foraging for Migratory Birds**



**Grasslands Selenium Drainage Discharge to the Federal
San Luis Drain**



**Migratory Birds Forage and Swim in Selenium
Contaminated Waters of the federal San Luis Drain for
28 miles either through adjacent Wetland Areas or in
National and State Wildlife Areas**



**GBP Selenium Drainage in San Luis Drain Before
Discharge to Mud Slough**



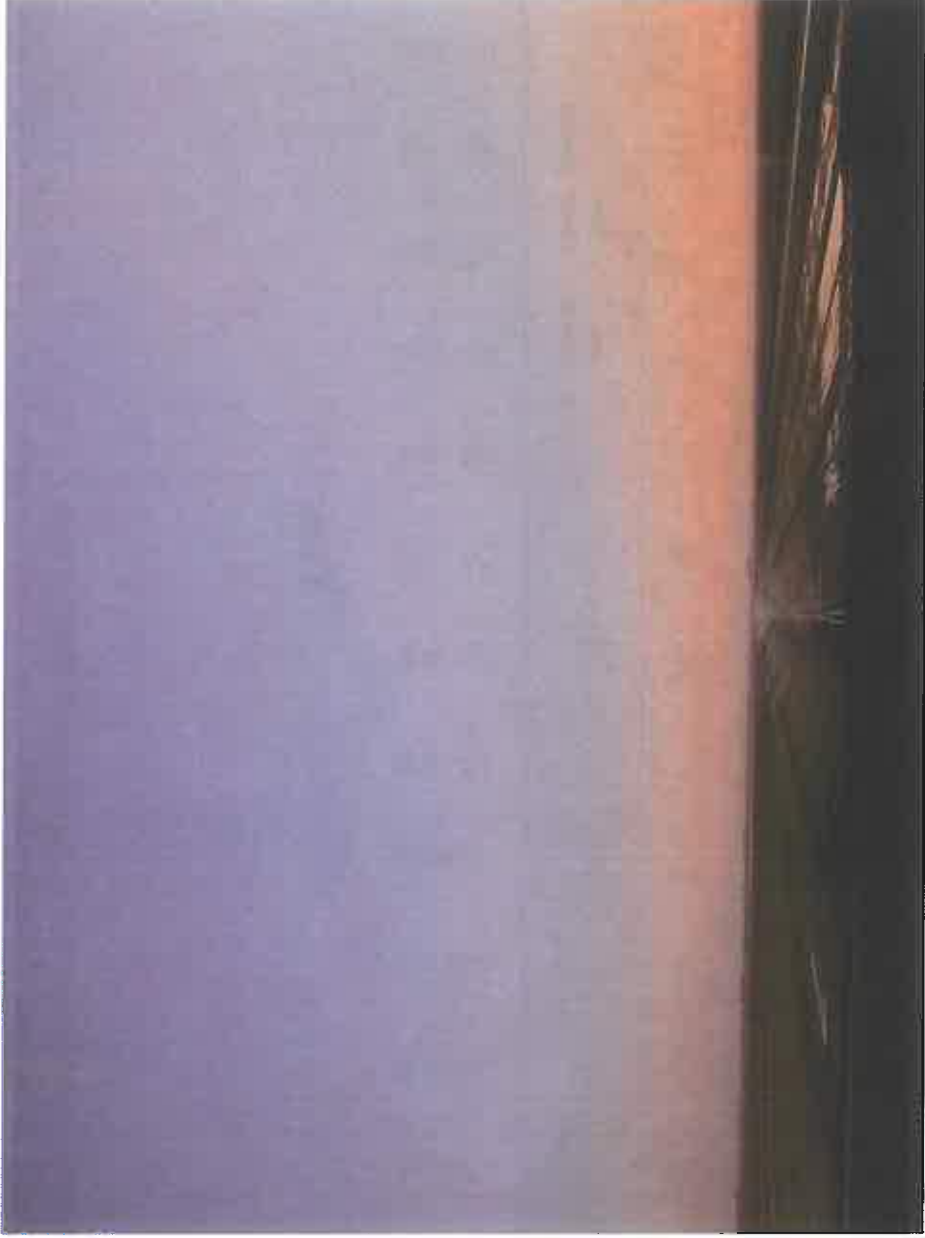
**GBP Selenium Discharge to Mud Slough
from San Luis Drain**



**GBP Selenium Discharge To Mud Slough
Below the San Luis Drain**

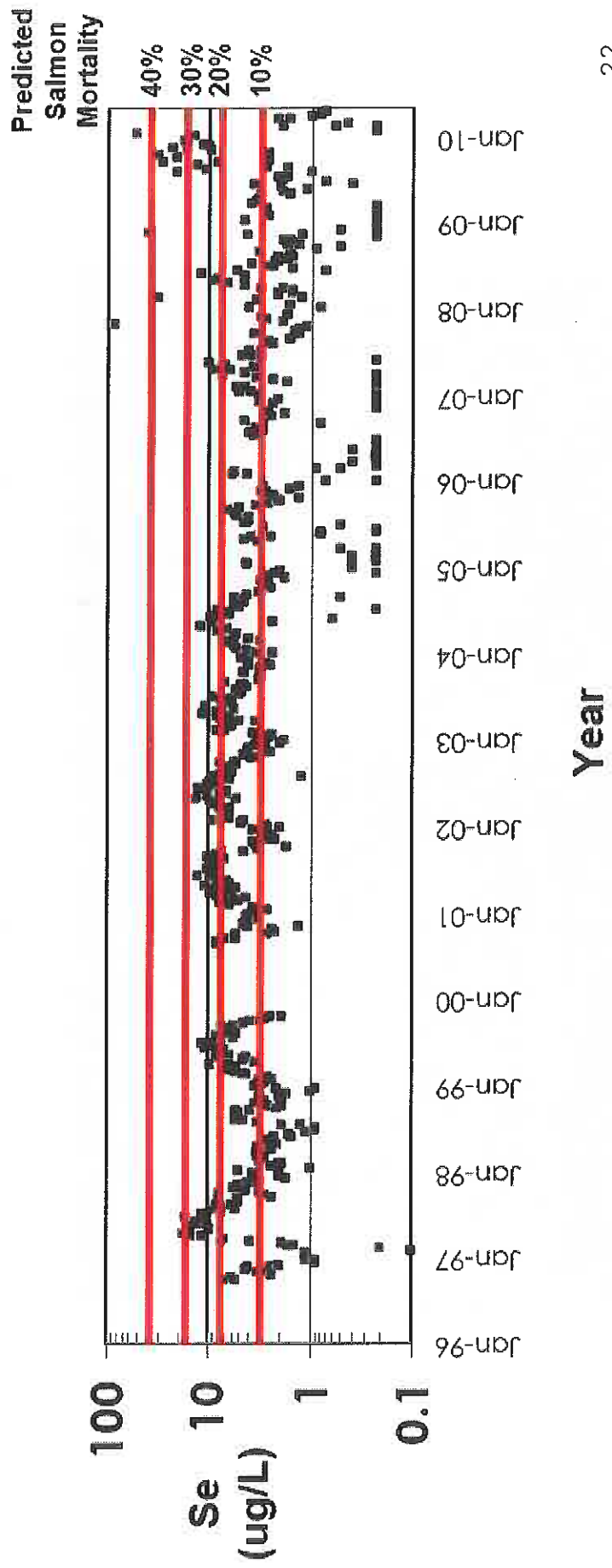


**Wetlands Next to Mud Slough Selenium Drainage in the
San Luis National Wildlife Area**

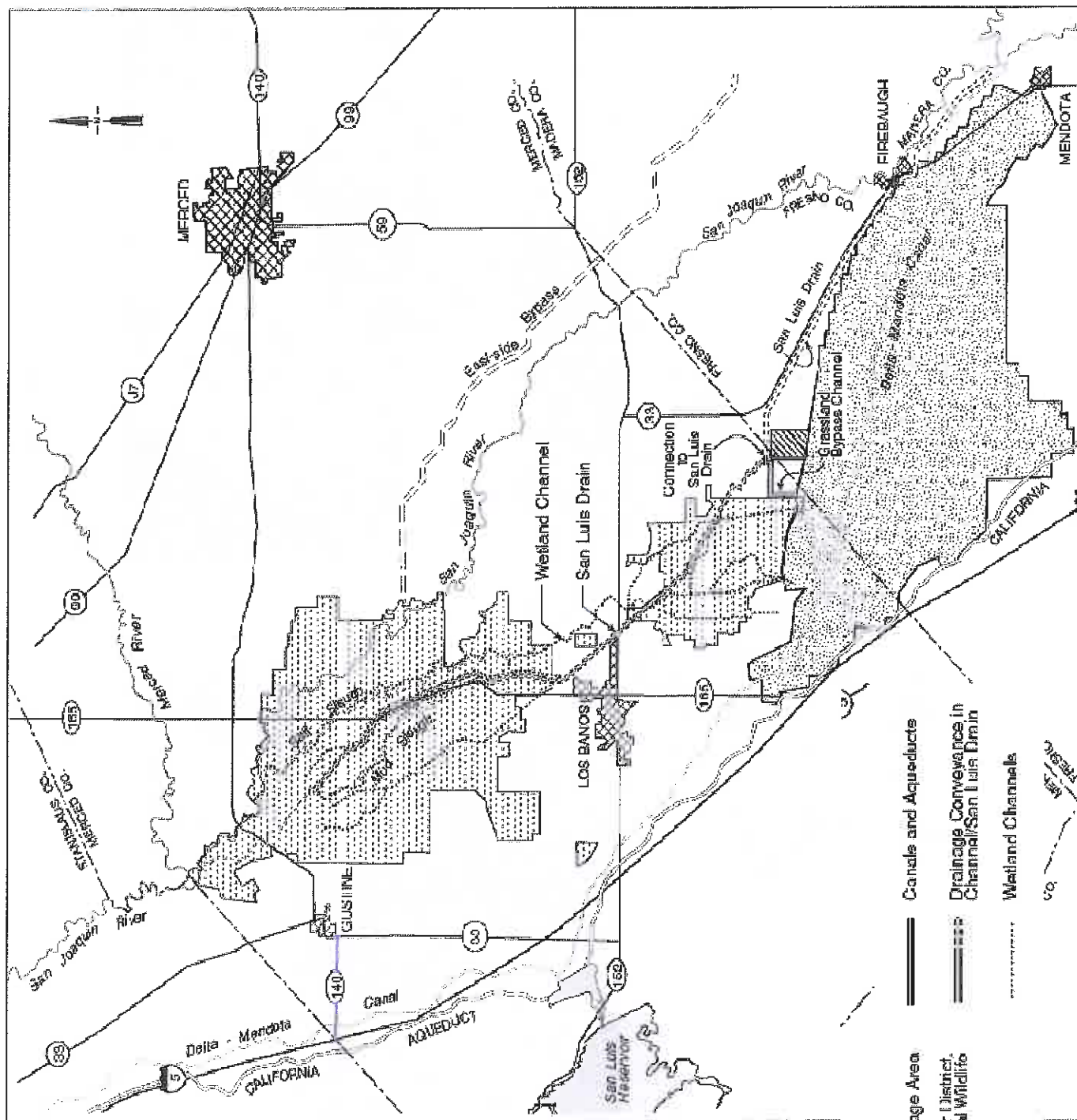


Irrigation Water “Ponding” on Toxic Selenium Soil Areas of Grasslands Bypass Project Next to Main Canal & GBP Drainage Ditch-Typically left out of the GBP Tour

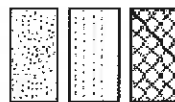
Selenium Levels and Predicted Salmon Mortality in the San Joaquin River



Selenium concentrations measured in the San Joaquin River at Hills Ferry (data from the U.S. Bureau of Reclamation)



LEGEND



CVRWQCB Measured 1480 ppb Selenium in 2003 in Ponded Shallow Groundwater



23

Drainage Solutions: Homage to the Ponds of Folly, Joseph Skorupa, USFWS 2003 UC Drainage Conf.
Hazardous Waste levels of Selenium found at Cotton Gin Site near Five Points, California Unregulated
Discharges Outside of GBP Area That Drain Into the Project Area

